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FOLEY & LARDNER
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WASHINGTON, DC 20007-5109

In re Application of
Jain
Application No. 09/337,675
Filed: 22 June, 1999
Attorney Docket No. 029318/0497

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OFFICE OF PETITIONS
ON PETITION

This is a decision on the petitions filed respectively on 3 December, 2001, for revival of the application under 37 C.F.R. §1.137, section (b) alleging unintentional delay.¹

The petition under 37 C.F.R. §1.137, section (b) is **GRANTED**.²

The record reflects that:

- the instant application for failure to reply timely and properly to a non-final Office action mailed on 10 April, 2001, with
 - a reply filed on 12 September that failed to place the application in condition for allowance,
 - an Advisory Action mailed on 25 September, 2001, and
 - an Improper Continued Prosecution Application (CPA) filed (with request and fee for extension of time) filed on 10 October, 2000;
- the improper CPA was treated as an Request for Continued Examination (RCE), however, the RCE was not accompanied by the required submission;
- the application went abandoned after midnight 10 October, 2001;
- a Notice of Improper CPA was mailed on 24 October, 2001;
- the required submission for the RCE was filed contemporaneously with the instant petition.

¹ Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). A grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 C.F.R. §1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c).

² The RCE fee was charged/paid upon the filing of the improper CPA and the fee for the petition to revive was charged/paid upon its filing.

The instant application is being forwarded to Technology Center 1600 for further processing.
Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.



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